

HOUSE BILL 1443

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AN ACT to amend Chapter 421 of the Private Acts of 1943; as amended by Chapter 45 of the Private Acts of 1959; Chapter 102 of the Private Acts of 1989; Chapter 148 of the Private Acts of 1990; Chapter 136 of the Private Acts of 1996; Chapter 22 of the Private Acts of 1999; Chapter 81 of the Private Acts of 2002; Chapter 53 of the Private Acts of 2007; and any other acts amendatory thereto, relative to the Rutherford County Purchasing Act of 2017.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 421 of the Private Acts of 1943, as amended by Chapter 45 of the Private Acts of 1959, Chapter 102 of the Private Acts of 1989, Chapter 148 of the Private Acts of 1990, Chapter 136 of the Private Acts of 1996, Chapter 22 of the Private Acts of 1999, Chapter 81 of the Private Acts of 2002, Chapter 53 of the Private Acts of 2007, and any other acts amendatory thereto, that being the Rutherford County Purchasing Act, is amended by deleting Chapter 421, as amended, in its entirety and substituting instead the following:

Section 1. This act shall be known as the "Rutherford County Purchasing Act of 2017."

Section 2. Authority is hereby vested in the County Commission of Rutherford County to establish a County Purchasing Committee to be composed of seven (7) members consisting of the County Mayor and six (6) County Commissioners. The six (6) County Commissioners shall be recommended to the County Commission annually by the Steering Committee and voted upon by the County Commission. It shall be the duty of the County Purchasing Committee to purchase any and all supplies and equipment and to enter into contracts for labor or services which are chargeable under the law to the County. The County Purchasing Committee is hereby authorized to enact internal rules, regulations, and bylaws to govern its internal processes in carrying out the provisions of this Act.

The County Mayor shall be the Purchasing Agent for Rutherford County and ex officio chairman of the County Purchasing Committee, and shall be charged with the full responsibility of executing any and all of the provisions of this Act under the direction of the County Purchasing Committee, which shall have the sole power and authority to contract for and purchase all materials, supplies, and equipment of every kind whatsoever, including insurance, for the use of every official, agent, servant, department, or agency of, supported by or under the control of, the county government, and no other official, employee, or agent of the County or of any of its departments or agencies shall have the right to contract for or purchase any of such materials or supplies. The County Purchasing Committee likewise shall have the sole power and authority to arrange for the purchase or rental of any and all real estate, machinery, or other equipment where said purchases or rents are to be paid out of any funds belonging to or under the control of Rutherford County or any department, institution, or agency thereof, and no other official, employee, or agent of the county shall have any authority to make such purchase or rental. In the event the County Mayor shall become disabled or otherwise incapacitated such that the County Mayor is unable to perform the duties of the Purchasing Agent as prescribed under this Act, or should the County Mayor vacate or otherwise leave office without a replacement, the County Budget & Finance Director shall temporarily perform the duties of the Purchasing Agent until such disability or incapacity is removed or until the vacancy of the office of County Mayor is filled, as the case may be.

Purchases or contracts for the purchase of supplies, equipment, or materials for the use of any official, employee, department, or agency of the county government, the estimated value of which exceeds Ten Thousand Dollars (\$10,000.00) shall be executed by the County Mayor as Purchasing Agent only after such agent has advertised for sealed bids in one (1) or more newspapers published in Rutherford County and such other newspaper or newspapers as the agent may deem proper. The sealed bids shall be received by the County Purchasing Committee at a time fixed in the advertisement, which shall not be less than ten (10) days after the publication of the advertisement, and which sealed bids shall be opened publicly at the place, hour, and date advertised. Such advertisements shall describe requirements by general

classifications, and state that detailed descriptions of the supplies, materials, or equipment desired may be obtained from the Purchasing Agent upon application. Proposals shall be considered from manufacturers, producers, or dealers, etc., or their duly authorized selling agents, and bids received after the hour for opening bids shall not be considered. Tabulation of bids shall be effected as promptly as possible, after which such tabulation shall be opened for inspection. Contracts shall be awarded by the County Purchasing Committee only to established and responsible manufacturers, producers, or dealers, etc., or their authorized agents, and awards shall be made to the lowest and best bids or bidders. The County Purchasing Committee may reserve the right to reject any and all bids in whole or in part, and to waive technical defects in bids received. When two (2) or more bids are submitted at the same price on the same character, kind, and quality of supplies, materials, or equipment to be purchased, the County Purchasing Committee may in its discretion award the contract or contracts to either of such bidders, or may apportion the requirements between or among such bidders, or may elect to reject all such bids and advertise for new or additional bids. In addition to advertising for sealed bids, it shall be the duty of the County Purchasing Committee to stimulate bidding by all other feasible means.

Where the estimated fair market value of any materials, supplies, or equipment does not exceed the sum of Ten Thousand Dollars (\$10,000.00), the County Mayor in his capacity as Purchasing Agent is hereby granted the authority to make such purchases and execute contracts for the purchase of said materials, supplies, or equipment, without the necessity of newspaper advertisement or taking bids for the purchase of such materials, supplies, or equipment. However, the Purchasing Agent shall use all the necessary care and diligence in securing the best price possible for the benefit of the County, commensurate with the quality of said merchandise to be purchased. In no instance shall the purchase price of the contract price be in excess of the current fair market value of such materials, supplies, or equipment.

Notwithstanding any provision of this Act to the contrary, in the event of actual emergencies arising from unforeseen causes, including delays by contractors, delays in transportation, and unanticipated volume of work, the Purchasing Agent may waive the requirement for publicly advertised sealed bids. Such emergencies shall not include conditions

arising from neglect or indifference in anticipating normal needs. The Purchasing Agent shall prepare an emergency purchase order for each emergency purchase, which order shall contain at a minimum a description of the nature of the circumstances which precluded the observation of normal purchasing procedures, and the procedures followed to obtain a competitive price for the product or service. Each emergency purchase shall be based on competitive bids, which bids shall be documented and attached to the emergency purchase order. The procedure for evaluating competitive bids shall be the same as provided for publicly advertised sealed bids, except that the Purchasing Agent may receive and evaluate competitive bids, and award contracts for such emergency purchases in lieu of prior approval by the County Purchasing Committee. A report of such emergency purchases shall be presented, in writing, by the Purchasing Agent at each meeting of the County Purchasing Committee. Such report shall be kept on file and shall be open to public inspection.

Subject to all other requirements herein set out, the purchase of supplies, materials, equipment, etc., for the County and its agencies may be for long- or short-term contracts, contracts or orders to be filled or executed at certain seasons of the year, or by blanket contracts or riders of continuous duration to be executed at stated intervals.

The Purchasing Agent shall keep a complete record of all purchases, with copies of descriptive advertising, original bids when submitted in writing, and the names of all bidders together with the amounts of their bids, which records shall be at all times open to inspection by any taxpayers of the County or any other interested party.

Neither the County Purchasing Committee nor any official, department head, or any other agent or employee that engages in or who participates in any phase of the purchasing process established herein or by the rules and regulations of the County Purchasing Committee shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of any supplies, materials, or equipment for the County, nor in any firm, corporation, partnership, association, or individual furnishing any such supplies, materials, or equipment; nor shall the County Purchasing Committee or any official, department head, or any other agent or employee that engages in or who participates in any phase of the purchasing process established herein or by the rules and regulations of the County Purchasing Committee

accept or receive, directly or indirectly, from any person, firm, corporation, partnership, association, or individual to whom any contract is awarded or may be awarded, by rebate, gift, or otherwise, any money or other thing of value whatsoever, or any promise, obligation, or contract for future reward or compensation.

The County Purchasing Committee may, by regulation or otherwise, require security to accompany bids and fix the amount thereof; govern the procedure for the delivery and storage of supplies, materials, and equipment; govern the method and procedure whereby the departments, agencies, and officials of the county shall inform the Committee of their need for the purchase of the supplies, materials, equipment, etc.; prescribe forms for estimates, requisitions, orders, contracts, stores or storage control; establish definite or regular periods for submitting estimates or requisitions; dispose of or trade in obsolete, excess and unsuitable supplies, equipment, and salvage or transfer them to other using agencies of the county; provide for hearings on complaints with regard to the quality, grade, or brand of goods; and waive such rules in special or emergency cases.

The provisions of this Act shall not apply to the purchase of materials, supplies, or equipment of the Rutherford County Highway Commission, as authorized under Chapter 55 of the Private Acts of 1951, and neither shall the provisions of this Act apply to the Rutherford County School Commission, as authorized under Chapter 426 of the Private Acts of 1943, and likewise shall not apply to the Community Care Board, as authorized under the general statutes of Tennessee, nor to purchases from non-profit corporations such as the Local Government Data Processing Corporation, whose purpose is to provide goods or services specifically to counties. Further, the provisions of this Act shall not apply to contracts for professional services under T.C.A. § 12-3-1209.

Section 3. The County Mayor shall furnish a bond in the sum of One Hundred Thousand Dollars (\$100,000.00), which bond shall be conditioned upon the faithful and proper performance of his duties as Purchasing Agent charged with the full responsibility for the execution of any and all purchases made under the provisions of this Act. The premium on said bond shall be paid from the General Fund of the County.

Section 4. The Purchasing Agent shall have the right to require the presentation, or other forms of regulation, of articles, parts, equipment, property, and supplies before other articles, parts, equipment, property, and supplies are purchased by the Purchasing Agent; the Purchasing Agent shall have the authority to regulate the distribution of articles, parts, equipment, property, and supplies, requiring reports if the Purchasing Agent deems them necessary.

Section 5. No obligation incurred in the name of the County by any official or representative of the County, or any other person, shall be a binding obligation upon the County unless it is executed in conformity with the provisions of this Act as herein set out, and the County Mayor shall be charged with the responsibility of determining whether or not any such obligations shall have been incurred in conformity with the provisions of this Act, and shall have the authority to refuse payment of any claims that do not conform with the provisions of this Act.

Section 6. Any official named in this Act, or any other official, department head, or any other agent or employee that engages in or who participates in any phase of the purchasing process established herein or by the rules and regulations of the County Purchasing Committee and who fails or refuses to perform the duties required by the official of this Act or the rules and regulations established by the County Purchasing Committee, or who shall otherwise fail or refuse to comply with the provisions of this Act or the rules and regulations of the County Purchasing Committee, may be subject to removal from office by ouster proceeding or terminated from employment, as the case may be.

Section 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

Section 8. That all Private Acts or parts of such Acts in conflict with the provisions of this Act shall be and they are hereby repealed.

SECTION 2. This Act shall have no effect unless it is approved by a two-thirds (2/3) vote of the legislative body of Rutherford County. Its approval or non-approval shall be proclaimed by the presiding officer of the legislative body and certified to the Secretary of State.

SECTION 3. For the purpose of approving or rejecting the provisions of this Act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 2.